FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 25/2004
(*Ravindra Keshao Khadge* **VERSUS** *Mainabai wd/o Shrawanji Parande & 2 others***)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Paliwal, Adv. H/f Shri Khapre, Advocate for the appellant.
Shri Dharmadhikari, Advocate for the respondent.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 12th July, 2007.

Heard learned counsel for the parties.

The appellant is the original defendant. A suit was filed by plaintiff for partition and separate possession of the house property situated at Arvi. The property was initially owned by one Ramkrishna who had three sons namely Keshao, Anand and Deorao. The defendants are the legal heirs of Keshao. The plaintiff is the sister of Keshao.

Since Anand and Deorao died without leaving any legal heir behind them, Keshao claimed that the property came in possession of Keshao after Anand and Deorao. The plaintiff, who is the sister of Keshao, has filed the suit for partition and separate possession of her half share.

The defendants filed their written statement and denied the claim of the plaintiff. It was pleaded in the

written statement that deceased Ramkrishna had purchased one house at Arvi in the name of plaintiff and the house property which was purchased in the name of plaintiff was also liable to be partitioned. The defendant pleaded that the defendant was not entitled to seek the relief of partition in a dwelling house in view of Section 23 of the Hindu Succession Act, 1956.

The trial Court framed the necessary issues and held that the plaintiff had proved that she had half share in the suit property. The trial Court, however, denied the relief of partition and separate possession to the plaintiff in view of the provisions of Section 23 of the Hindu Succession Act as according to the relevant provision, a female heir was not entitled to claim partition in the dwelling house. The suit of the plaintiff was, therefore, dismissed.

In an appeal filed by the plaintiff against judgment passed by the trial Court, the appellate Court decreed the suit of the plaintiff and declared that the plaintiff was entitled to partition and separate possession of her half share. According to the appellate Court, the provision of Section 23 do not apply to the facts of the case, and therefore, the plaintiff was entitled to a decree

of partition and separate possession.

However, since the provisions of Section 23 of the Act are repealed, the reason recorded by the trial Court for not decreeing the suit of the plaintiff would not survive.

For the reasons aforesaid and for the reason that no substantial question of law arises for consideration in this second appeal, the same is dismissed with no order as to costs.

JUDGE

APTE